

K. by Great Brit. Geo II.

[i]

37.

Read 20 March 1730

212. K. 7
37



Enacted
3 Geo. II
Public Acts,
c. 35.

An ACT for making the Acts of the First and Seventh Years of his late Majesty's Reign (for making the River Kennet Navigable from Reading to Newbury, in the County of Berks) more effectual.



Whereas by an Act made in the first Year of his late Majesty's Reign, intituled, *An Act to make the River Kennet Navigable from Reading to Newbury in the County of Berks*, Richard Cowslade, Thomas Cowslade, Henry Martin, Bazil Broddwood, Esqrs; Thomas Pocock, John Hoare, Sen. and Thomas Milsam, Senior, Gentlemen, their Heirs, Assigns, or such Person or Persons as they, or any five or more of them, should nominate and appoint, under their Hands and Seals, their Deputies, Agents, Officers, Workmen, and Servants, were authorized and impowered, at their proper Costs and Charges, to make the said River navigable from the Wharf or common Landing place at *Reading* to *Newbury* aforesaid, and from time to time to continue, maintain, and use such Navigation in such manner as they should think fit; and Commissioners were appointed by the same Act for settling and determining Differences that should or might arise between the said Undertakers and others concerning the said Navigation, in such Manner as is therein mentioned: And for and in Consideration of the great Charges and Expences, not only in making the said River navigable, but also in repairing and keeping up the Works, Wears, Locks, and other Premises so to be made and erected, the said Undertakers, their Heirs and Assigns, are impowered to demand, recover, and take to and for their own proper Use and Behoof, such Tolls, Rates and Duties as are therein after mentioned and expressed:

A

And

And whereas by another Act made in the seventh Year of the Reign of his said late Majesty, intitled, *An Act for enlarging the Time granted for making the River Kennet navigable from Reading to Newbury in the County of Berks*, the Limits of the said Navigation were ascertained and declared to extend from the Wharf or common Landing-place in, at, or near Reading, to a Place called the *Hospital*, in the said Borough of Newbury:

And whereas the said Navigation hath, in pursuance of the said recited Acts, been finished and compleated at the Expence of Fifty thousand Pounds and upwards, and in Consideration thereof, the Tolls and Profits arising by the said Navigation, became vested in the said Undertakers, their Heirs and Assigns: But the Powers and Authorities given them by the said Acts, are, by Experience, found to be defective, and not sufficient to maintain and preserve the said Navigation, and to recover the Duties charged thereon, and the Methods thereby prescribed for ascertaining the Damages to be occasioned by the said Navigation, after the compleating thereof, have been attended with great Difficulty and Expence;

May it therefore please your most Excellent MAJESTY,

That it may be **Enacted**; **And be it Enacted**, by the KING's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament Assembled, and by the Authority of the same, That in case any Person or Persons refuse or neglect to pay the Tolls, Rates, or Duties granted or appointed by the said first recited Act, upon reasonable Demand, it shall be lawful to and for the said Undertakers and Proprietors, their Heirs and Assigns, or the major Part of them having such Share or Interest in the said Navigation as herein after is declared, or any Person or Persons to be from time to time duly appointed by them, or the major Part of them, by Writing under their Hands and Seals, to seize, distrain, or detain, any Boats, Barges, or Vessels, and the Tackle or Furniture belonging thereto, at the Place or Places of Delivery of their respective Cargoes, or any other Place or Places within the Limits of the said Navigation; and in case the said Tolls, Rates, or Duties be not paid within five Days next after such Seizure or Detainer, the Person or Persons making such Distress may, with the Constable or Headborough, or other Officer of the Peace where such Distress shall be taken (who is hereby required to be aiding and assisting therein) cause the said Vessel, Tackle, and Furniture thereof, so distrained, or a sufficient Part thereof, to be appraised by two Appraisers, to be appointed by such Constable, Headborough, or other Officer, to appraise the same truly and indifferently, according to the best of their Judgment; and after such Appraisement, shall and may, within five Days, sell the same, or any Part thereof, for Satisfaction of the said Tolls, Rates, or Duties, deducting the Charges for such Distress and Sale, rendering the Overplus, if any be, to the Owner or Owners.

Provided nevertheless, That every of the said Proprietors making such Majority, be actually possessed of one full Two-and-thirtieth Part or Share of the said Premises (the whole being divided into Thirty-two equal Parts or Shares) and that every such Proprietor shall have so many Votes from time to time, as he, she, or they, shall have and be possessed of such Two-

and



and-thirtieth Parts or Shares, and no more; and that such major Part of the said Proprietors shall from time to time act and determine in all Cases, Matters and Things whatsoever relating to the said Navigation, and the carrying on thereof.

And be it further Enacted, by the Authority aforesaid, That the said Undertakers or Proprietors, their Heirs or Assigns, or such major Part of them as aforesaid, or any Person or Persons duly appointed as aforesaid, shall be enabled, and he or they is and are hereby enabled from time to time to sue for and recover the said Tolls or Duties, and all Monies received, or to be received upon account of the same, and also all Monies due, or to grow due to the said Proprietors for Wharfage, Warehouses, Granaries, Lands, or Tenements belonging to the said Proprietors, by Action, Bill, Suit, or Information, in any of his Majesty's Courts of Record at *Westminster*, to the Use of the said Undertakers or Proprietors, their Heirs and Assigns, wherein no Essoign, Privilege, Protection, Imparlane, or Wager of Law shall be allowed; and it shall not be lawful for any of them to release, defeat, or discharge the said Action or Suit, or the Rates, Tolls, or Duties thereby sued for, or any other Action, Suit, or Demand, without the Consent of the major Part of them as aforesaid; nor shall any such Suit or Action abate by the Death of any of the said Undertakers or Proprietors, their Heirs or Assigns.

And for preventing Abuses tending to defraud the said Undertakers or Proprietors, **Be it Enacted**, by the Authority aforesaid, That every Bagemaster, or other Person or Persons, having the Care or Charge of any Barge, Boat, or other Vessel navigating on the said River, shall, upon Demand, deliver or cause to be delivered to the said Undertakers and Proprietors, or their Assigns, or their Agent or Agents, to be by them, or the major Part of them, appointed as aforesaid in that Behalf, a true and particular Bill under the Hand of the Party delivering the same, of their respective Loadings, containing the Quantities, Weights, and Qualities thereof; and in Case of Refusal or Neglect so to do, or in Case the said Particular or Bill be false or fraudulent, every such Bagemaster or other Person having the Care or Charge of any Boat, Barge, or Vessel as aforesaid, shall, upon Conviction thereof in any of his Majesty's Courts of Record at *Westminster*, by Indictment or Information, forfeit Five Pounds to the said Proprietors, with Cost of Suit.

And be it Enacted, by the Authority aforesaid, That in all Cases where the Sum hereafter adjudged or decreed for Damages, in Pursuance of the said recited Acts, shall not exceed Twenty Pounds, it shall be final on the Proprietors of the said Navigation without Appeal, but Land Owners may then appeal in the Manner herein after mentioned; but in every Case where the Sum adjudged or decreed for such Damages shall exceed Twenty Pounds, it shall and may be lawful to and for the said Proprietors, their Heirs or Assigns, or any other the Party or Parties who shall think him or themselves aggrieved, to appeal to the Judge or Judges of Assize for the County of *Berks*, which said Judges, or one of them, are and is hereby empowered and required, in a summary Way, to summon the said Parties, and to issue out their or his Warrants to the Sheriff of the said County, to impannel and return a Jury, in like Manner as before the said Commissioners, by Virtue of the said recited Acts, or either of them, in order to try the said Appeal, and after such Tryal and Verdict, the said Judge or Judges shall give Judgment thereon, with such Costs to either Party as he or they shall

shall think reasonable ; and the said Commissioners or any Seven or more of them, and the said Judge or Judges of Assize are hereby respectively empowered and required to grant a View to either Party desiring the same.

Provided nevertheless, That every such Appeal be brought at the next Assizes after every Adjudication or Decree so appealed from, unless such Decree shall be made within Twenty Days before such next Assize, in which Case it shall and may be lawful for the Party aggrieved to appeal to the Judge or Judges of the next succeeding Assize ; and in case the Judge or Judges of Assize, before whom such Appeal shall be brought, shall not determine the same, then the Judge or Judges of the next succeeding Assize shall hear and determine the same in the like Manner.

Provided also, and it is hereby further Enacted, by the Authority aforesaid, That before any such Appeal or Appeals by the Proprietors of the said Navigation be made or received, the Party or Parties making the same, shall pay to the other Party or Parties the Sum or Sums of Money, which upon every such Adjudication or Decree of the said Commissioners shall be decreed and adjudged to him, her, or them respectively, with the Costs thereof, the Party or Parties receiving the same at the Time of receiving thereof, giving his, her, or their Bond to the Appellant or Appellants in the Sum to be so received for his, her, or their abiding the Determination of the said Appeal, and paying or refunding such Sum or Sums of Money, as upon the Determination of such Appeal or Appeals, shall or may be ordered or decreed to be refunded or paid, by him, her, or them respectively.

Provided nevertheless, That no such Appeal shall be had unless the Money so decreed, and the Costs thereof be paid or tendered by the said Undertakers or Proprietors, their Servants or Agents, within Twenty Days after such Decree.

And, for preventing unreasonable and vexatious Complaints by Persons suffering or pretending to suffer Damage by the said Navigation, Be it Enacted, by the Authority aforesaid, That no Person or Persons receiving or suffering, or who shall pretend to receive or suffer any Damages sustained by Means of the said Navigation, shall prefer any Complaint, or commence any Prosecution for the same, until Fourteen Days after a Particular in Writing of such Damage, and the Sum demanded for the same, shall have been delivered by the Person or Persons making such Demand unto the said Proprietors, or their Agent or Agents, Servant or Servants, taking Charge of the said Navigation ; To the End the said Proprietors may have an Opportunity of making a reasonable Satisfaction for the same, without a Commission ; but if the Complainant or Complainants shall apply to the Commissioners, and if the said Commissioners shall adjudge or decree as much for the said Damage as was demanded by the Person or Persons making such Complaint, or more than shall appear to have been tendered for the same by the said Proprietors, or their Agents or Servants, within the said Fourteen Days ; then, and in either of the said Cases, the said Undertakers and Proprietors, and their Assists, shall pay Costs ; but in Case it shall appear to the said Commissioners, that the said Proprietors, or their Agents or Servants had, within the said Fourteen Days, tendered to the said Party or Parties making such Complaint, as much as the said Commissioners shall adjudge or decree for such Damage, and One Fourth Part more than the Sum so adjudged, and that the same had been refused to be accepted

accepted by the said Complainant or Complainants, then every such Complainant or Complainants shall pay Costs to the said Proprietors, such as the Commissioners shall think reasonable; and that no such Prosecution shall be commenced for any Damage hereafter to be done or suffered, after Twelve Calendar Months from the Time when such Damage was pretended to be suffered or done.

And be it Enacted, by the Authority aforesaid, That the said Commissioners, or any Seven or more of them, shall meet together at or near Aldermaston in the said County of Berks, on the first *Tuesday* in every Month of *April*, to receive and mediate Complaints; the first *Tuesday* in every Month of *May*, to hear and try Complaints; and the first *Tuesday* in every Month of *September*, to receive and mediate Complaints; and every first *Tuesday* in the Month of *October*, to hear and try Complaints in every Year, and not oftner, for putting in Execution this and the said former Acts; and that at such publick Meetings, all new Commissioners for putting in Execution the Powers of this Act, and the said former Acts, shall, from time to time, be named and appointed by the Commissioners at the said Meetings, as in the said former Act is appointed.

Provided nevertheless, and be it Enacted, by the Authority aforesaid, That if the said Commissioners shall fail or neglect to meet at any or either of the Times before appointed for such their Meetings, in every such Case it shall and may be lawful to and for any one or more of the said Commissioners, and he or they are hereby required, upon Application to him or them, made by any Person or Persons receiving Damage as aforesaid, to appoint another Meeting for the Purposes aforesaid, at any time before the next General Meeting, giving Ten Days Notice thereof to the said Proprietors, their Agent or Servant.

And whereas it is doubted whether the said Commissioners appointed by the said first recited Act have Power to summon or compel any Witness to appear before them; **Be it further Enacted**, by the Authority aforesaid, That all and every Person and Persons concerned or interested in the Matter or Complaint to be heard or tried before the said Commissioners, upon his, her, or their Application to any Two Commissioners, shall have a Summons granted for any Witness or Witnesses to appear before the said Commissioners, to give Evidence touching the Matter in Question; and in Case any Witness or Witnesses, being duly summoned, shall neglect or refuse to attend and be examined, every such Person or Persons so neglecting or refusing, shall forfeit and pay the Sum of Forty Shillings to the Party aggrieved, to be recovered by Action, Bill, Suit, or Information in any of his Majesty's Courts of Record at *Westminster*; and in Case any Witness or Witnesses shall wilfully or corruptly forswear him, her, or themselves, he, she, or they, upon Conviction thereof, shall suffer the like Pains as if the same had been in any of his Majesty's Courts of Record at *Westminster*.

And be it further Enacted, by the Authority aforesaid, That if any Person or Persons, after the Twenty-fourth Day of *June*, One thousand Seven hundred and thirty, shall wilfully or maliciously cut or make, or cause to be cut or made, any Breach or Breaches in any of the Banks of the said River, or of any Watercourse running into or out of the said River, or shall wilfully or maliciously do any other Matter or Thing whereby the said Navigation shall be hindered, damaged, or interrupted, or any other Matter or Thing whereby any Lands, Mills, Tenements, or Hereditaments ad-

joining or contiguous to the said River, shall or may be damaged, or shall cut down, burn, destroy, or take away any Materials belonging to any Wear, Lock, Sluice, Gate, or Bridge, designed for the Use of the said Navigation, or for the Use of the said Lands, Mills, Tenements, or Hereditaments, or shall maliciously open, draw up, or shut down any of the Sluices or Hatches in any of the Locks or Turnpikes upon the said River, whereby the said Navigation shall be prejudiced, damaged, or interrupted, or any other Damage done as aforesaid; all and every Person and Persons so offending, and being thereof lawfully convicted before the said Commissioners as aforesaid, shall make good the Damage or Damages sustained thereby, with full Costs; or it shall be lawful for the said Undertakers and Proprietors, or their Assigns, or the major Part of them, and for the Owner or Owners of such Lands, Mills, Tenements, or Hereditaments damaged as aforesaid, to sue for such Damage or Damages by Action, Bill, Suit, or Information in any of his Majesty's Courts of Record at *Westminster* as aforesaid.

And whereas great Damages do often happen, and are occasioned to the Lands, Mills, Tenements and Hereditaments, on or near to the River *Kennet*, by the Negligence and Carelessness of the Servants and Agents of the said Undertakers and Proprietors, in not keeping their said Locks, Turnpikes, Sluices, and Hatches shut down when Boats, Barges, and Vessels have passed and repassed the same, and also in not keeping the said Bridges and Gates locked and shut down, **B**e it **E**nacted, That in every such case, and to prevent such Damages, it shall and may be lawful, to and for the Occupier or Occupiers of such Lands, Mills, Tenements and Hereditaments, which shall or may sustain any Loss or Damage by the Means aforesaid, their Servants or Agents, from time to time, to shut down, and keep shut down, such Locks, Turnpikes, Hatches, Sluices, Bridges and Gates, when any Barge or Boat hath passed or repassed the same (except in Times of Floods.)

Provided nevertheless, That nothing herein contained, shall be construed or deemed to give Power or Authority to such Person or Persons to shut down the said Locks, Turnpikes, Hatches, Sluices, Bridges or Gates, when the same are and ought to be open for the Use of the said Navigation, but that the said Proprietors, their Heirs, Assignees or Nominees, may hold, use and enjoy their said Locks, Turnpikes, Hatches, Sluices, Bridges and Gates for the Use of the said Navigation, in the same manner as they might hold, use, and enjoy the same by Virtue of the said first recited, or this present Act, any Thing herein contained to the contrary thereof notwithstanding.

And be it **E**nacted, by the Authority aforesaid, That the said Undertakers or Proprietors of the said Navigation, their Heirs, Assigns, Agents, Servants, and Workmen, shall have Power and Authority, and they are hereby authorized and impowered to remove and take away all Shoals, Shelves, Rubbish, and other Impediments in the Channel of the said River *Kennet*, which shall at any time or times prejudice or hinder the Navigation of the said River, at any Place or Places between the Place called the *Hospital*, in the said Town of *Newbury*, and the River of *Thames*, making reasonable Recompence for such Damage.

And be it further **E**nacted, That all the said Commissioners Proceedings in or about the said Premises, and all Orders, Sentences, and Decrees so to be made as aforesaid, and all Instruments whereby new Commissioners shall from time to time be appointed, and all Orders that shall be made by any

any Judge or Judges of Assize upon any such Appeal or Appeals, and all other Proceedings touching any of the Matters aforesaid, shall be kept amongst the Records and Writings of the Sessions of the Peace for the said County of Berks, to which all Persons shall have free Recourse to inspect the same gratis, and may take Copies thereof, or of any Part thereof, paying for every such Copy after the Rate of Six-pence for every hundred Words, and the same, or true Copies thereof, shall be taken and adjudged to be good and sufficient Evidence in any Court of Law or Equity.

And be it Enacted, by the Authority aforesaid, That if any Owner or Owners of any Boat, Barge or Vessel, navigating in or upon the said River, shall permit or suffer any Fishing-Net, Gun or Engine for taking and destroying of Fish or Game, to be carried in such Boat, Barge or Vessel, being thereof convicted by the Oath of one or more credible Witness or Witnesses before two or more of the said Commissioners, which Oath they are hereby authorized to administer, shall forfeit for every such Offence the Sum of Five Pounds, to be levied by Warrant of the said Commissioners, or any two or more of them, by Distress and Sale of the said Offender's Goods, rendering the Overplus (the Charges of such Warrant, Distress and Sale being therout first deducted) to such Offender; one Moiety of the said Forfeiture to be paid to the Informer, and the other Moiety to the Poor of the Parish where such Offender shall be convicted.

provided always, and be it Enacted, That all Damages sustained by Means of the laid Navigation before the Twenty-fourth Day of June in the Year One thousand Seven hundred and Thirty, shall be had and recovered in the same Manner as Damages are directed to be recovered by the said first recited Act, and not otherwise, any Thing therein contained to the contrary notwithstanding.

And be it Enacted, by the Authority aforesaid, That if any Action, Bill, Suit, or Information, shall be had, brought or prosecuted by any Person or Persons against the said Undertakers or Proprietors, their Heirs, Assignees or Nominees, in any of his Majesty's Courts of Record, that such Action, Bill, Suit or Information, shall not cease or abate by the Death of the said Undertakers or Proprietors, their Heirs, Assignees or Nominees, or any of them, nor any Advantage taken by Abatement, Demurrer, or otherwise, though each and every of the said Undertakers or Proprietors shall not be named in such Action, Suit, Bill or Information.

And be it further Enacted, That it shall and may be lawful to and for the Receiver or Receivers (appointed by the said Commissioners) to receive and recover the Tolls, Rates and Duties, for paying and satisfying the Sum and Sums of Money so assessed for such Damages, and Costs thereof, in the same Manner, and by, with, and under the same Powers and Authorities, as the laid Tolls, Rates and Duties may be had and recovered by the said Undertakers or Proprietors, their Heirs, Assignees or Nominees, by Virtue of the said first recited, or this present Act.

And be it Enacted, by the Authority aforesaid, That the said Undertakers or Proprietors, their Heirs, Assignees or Nominees, shall from time to time, at their own Costs and Charges, erect, maintain and support, such sufficient Bridges, Gates and Styles, in and upon the Towing-paths used for the said Navigation, as by the said Commissioners, or any Seven or more of them shall be directed.

And be it Enacted, by the Authority aforesaid, That no *Certiorari* shall lie or be granted by any Court or Courts to remove any of the Proceedings

of

of the said Commissioners, or other Proceedings had by Virtue of this, or the said first recited Act.

And whereas a certain Lock called the Country Lock, situate near Reading on the said River Kennet, was many Years before the said Navigation, erected and made use of for the Service of the Lands thereto adjacent, and is, and may in Times of Floods, be useful for the speedier carrying off the Water from the said Lands, without Prejudice to the said Navigation, Be it Enacted, That if any Owner or Occupier of any Lands affected by such Floods, shall apply to the said Proprietors, their Servant or Agent, to open and draw the said Lock, and the said Proprietors, their Servant or Agent, shall refuse or neglect to open and draw the same, that then, and in every such case, it shall and may be lawful for such Owner or Occupier of such Lands so applying; or his Servants or Agents, to open, draw, and keep open the said Lock, until the Water shall be thereby drawn down to the last Mark set and affixed at the said Lock by the late Commissioners of Sewers for that Purpose.

Provided always, That this Act shall be deemed, adjudged, and taken in all Courts and Places within this Kingdom to be a publick Act, and all Judges, Justices, and other Persons, are hereby required to take Notice thereof as such, without specially pleading the same.

An ACT for making the Acts of
the First and Seventh Years
of his late Majesty's Reign
(for making the River Kennet
Navigable from Reading to
Newbury, in the County of
Berks) more effectual.

[1730.]

